

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TERRELL ANTWAIN KELLY,

Petitioner,

v.

Case No. 20-CV-68

CHRIS BUESGEN,

Respondent.

ORDER GRANTING MOTION TO VOLUNTARILY DISMISS HABEAS PETITION

Terrell Antwain Kelly, who is currently incarcerated at the Stanley Correctional Institution, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket # 1.) Kelly has filed a motion to voluntarily dismiss his petition. (Docket # 12.) The rules governing habeas corpus proceedings do not include a rule pertaining to voluntary dismissals of habeas corpus petitions. Therefore, under Rule 12 of the Rules Governing § 2254 cases, I will apply Fed. R. Civ. P. 41(a)(2), which provides that an action may be dismissed at the plaintiff's request by court order. Kelly has advised his counsel that he no longer wishes to pursue a writ of habeas corpus in this case. Therefore, I will grant Kelly's motion for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(2) and will dismiss this action without prejudice.

Kelly should be aware, however, should he seek to re-file his habeas petition at a later date, that statutes of limitations found in 28 U.S.C. § 2244(d) will govern the petition.

NOW, THEREFORE, IT IS ORDERED that petitioner's motion to voluntarily dismiss his habeas petition (Docket # 12) is granted and this action is dismissed without prejudice. The clerk of court is directed to close this case.

Dated at Milwaukee, Wisconsin this 3rd day of February, 2022.

BY THE COURT

s/Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge